

[*Carmack v. Tennessee Valley Authority*](#), 88-ERA-18 (Sec'y Feb. 28, 1991)

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: February 28, 1991
CASE NO. 88-ERA-18

IN THE MATTER OF

RAY D. CARMACK,
COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER OF DISMISSAL

This case, arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982), is before me pursuant to the [Recommended]¹ Dismissal Order issued by Administrative Law Judge Victor J. Chao on May 23, 1988. on December 6, 1990, I issued an Order to Submit Settlement Agreement or Other Clarification (Order), which stated in part:

This case cannot be dismissed unless the Secretary reviews and approves the parties' settlement, if any. It is not clear that a settlement exists in this case. Although the filing of a stipulation might imply that the instant dispute has been resolved on mutually agreeable terms culminating in a settlement, it is also possible that Complainant requested dismissal of the proceedings without requiring anything in return from Respondent. If so, this case may be dismissed on the Stipulation alone.

Order at 2 (citations and footnote omitted).

Pursuant to my order, on December 19, 1990, counsel for Respondent submitted the following written clarification (copy

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also sent to Complainant):

As your order noted, the Administrative Law Judge recommended dismissal of this case based on the May 19, 1988, stipulation of dismissal which was signed by both complainant and counsel for respondent. That stipulation was based on complainant's desire to withdraw the complaint and to have the case dismissed. There was no settlement of Complainant's claims. Therefore, as your order also noted, under *Scott v. American Protective Servs., Inc.*, No. 89-ERA- 35 [Secretary's Final order of Dismissal], (Apr. 26, 1990), it is appropriate to dismiss this case pursuant to Rule 41(a)(1)(ii), Fed. R. Civ. P.

Accordingly, this case is DISMISSED WITHOUT PREJUDICE. *See Scott*, slip op. at 2-3.

SO ORDERED.

LYNN MARTIN

Secretary of Labor

Washington, D.C.

[ENDNOTES]

¹ Under section 24.6 of 29 C.F.R., the regulation implementing the ERA, an ALJ is authorized to issue only a recommended decision, which must be reviewed by the Secretary before it becomes final. *See Cooper v. Bechtel Power Corp.*, Case No. 88-ERA-2, Sec. Order, September 29, 1989, slip op. at 1.